IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA.

RSA No. 199 of 1996

Date of Decision : 29.10.2007

State of H.P. …Appellant.

v:

Murti Mahadev Makima Mandir …Respondent.

***Coram*:**

The Hon'ble Mr. Justice Sanjay Karol, Judge.

Whether approved for reporting?[1] *No.*

For the appellant: Mr. Ashok Chaudhary, Addl. Advocate General.

For the respondent. Mr. Ankush Dass Sood, Advocate

Sanjay Karol, J. (Oral)

The appeal is re-heard today.

The present appeal arises out of the judgment and decree dated 30.1.1996 passed by the District Judge, Hamirpur, in Civil Appeal No. 82 of 1990 titled as Murti Mahadev Makima Mandir Mahadev Shivji vs. State of H.P. & others partly interfering with the judgment and decree dated 28.2.1990 passed by the Sub Judge Ist Class (I), Hamirpur in Civil Suit No. 359/86 inter se between the same parties.

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[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

The present appeal was admitted on the following substantial question of law:-

"1) Whether the Civil Court has no jurisdiction to entertain and try the suit in view of the bar created by Section 10 of the H.P. Village Common Lands (Vesting and Utilization) Act, 1974 and under Section 13 of the Punjab Village Common Land (Regulation) Act., 1961?

2) Whether the land in dispute except 11 marlas being shamlat has rightly been vested firstly in Panchayat and then in the State of H.P. free from all encumbrances and all rights, title or interest existing on the suit land stood extinguished by operation of law?

3) Even otherwise, the mis-reading of documentary and oral evidence itself amounts to substantial question of law.

For the purpose of convenience, the appellant hereinafter is referred to as the 'defendant' and the respondent is referred to as the 'plaintiff'.

Plaintiff filed a suit for prohibitory injunction restraining the defendant from changing the nature of land comprising in Khata No. 32 min, Khatauni No. 83, Khasra Nos. 529 to 532 measuring 14 kanals 3 marlas situate in Tika Lahru, Mauza Chamiana, Tehsil Sujanpur, District Hamirpur. As per the plaintiff the temple of 'Mahadev Shivji' and a temple of 'Guga Chhatri' on the land are in existence since time immemorial and people have been worshiping there. Plaintiff was aggrieved by

the fact that certain illegal entries were made by the Naib Tehsildar on 12.3.1986 in the revenue record and based on the same the defendants were threatening to raise construction on the suit land. The plaintiff's case was resisted by the defendant inter alia on the ground that the plaintiff was in possession of only 11 marlas out of the suit land.

After adjudication of the issues framed by the trial Court, the Court held that the suit of the plaintiff was barred in view of Section 3 of the H. P. Village Common Lands (Vesting and Utilization) Act, 1974 (hereinafter referred to as 'the Act') and the suit of the plaintiff was consequently dismissed vide judgment and decree dated 28.2.1990 .

Aggrieved by the same, the plaintiff preferred an appeal before the District Judge, Hamirpur, who in turn, vide judgment and decree dated 30.1.1996 partly allowed the plaintiff's appeal holding that the suit filed by the plaintiff was maintainable and the jurisdiction of the Civil Court was not ousted qua the relief claimed for. The Court further held that the plaintiff was in possession of 6 Kanals of land out of the entire disputed land. While arriving at its conclusion, the Court referred to and relied upon the jamabandi (revenue record) pertaining to the year 1914-15 (Ext.D-3), 1944-45 (Ext.D-2), 1970-71(Ext.P-1), 1981-82 (Ext.P-3), 1976-77 (Ext.P-2) and other documents. The suit of the plaintiff was consequently decreed to the extent of the land that was found in their

possession and the State was restrained from raising any construction or changing nature thereof.

Learned counsel for the parties jointly submitted that question of law No.1 is squarely covered by the decision rendered by this Court in ***Dalip Singh*** v. ***State of H.P***. (1992(I) Shim.Law Cases 320). The suit filed by the plaintiff for permanent prohibitory injunction is maintainable and the Court would have the jurisdiction to try the same. In this view of the matter, no specific adjudication is required to be made by this Court.

Learned counsel for the defendant submits that the plaintiff's right to be in possession of 11 marlas of land is not disputed by the State in any manner. The plaintiff rightfully continues to be in possession of the said land and the same has not vested in the State of Himachal Pradesh. Consequently, the plaintiff is the owner in possession of the same.

Substantial question of law No.2 framed by this Court, in my view, would not arise for consideration for the simple reason that this was not even a subject-matter of controversy or adjudication before the trial Court as also the Ist Appellate Court. Plaintiff has filed a simpliciter suit for permanent prohibitory injunction to safeguard its possession. No issue with regard to vestment of the land in the State, free from all encumbrances, by virtue of the Act was ever framed by the Court below. Therefore, this question need not to be dealt with.

Question No.3 is essentially a question of fact. In view of the admitted position by the defendant this question is also not being considered.

It has been found by the Ist Appellate Court that the plaintiff is in possession of 6 Kanals of land out of the entire suit land. Admittedly, the plaintiff's claim qua 11 marlas of land is not in dispute. The plaintiff does not claim ownership on the remaining land either. Therefore, it would be open for the defendant to initiate action, in accordance with law for recovery of possession of the suit land except for 11 marlas which is undisputedly in the ownership and possession of the plaintiff.

The appeal is accordingly disposed of.

October 29, 2007. **(Sanjay Karol)**
(rana) **Judge.**